

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

JENNIE ANDERSON,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 1:15-CV-03085-MKD

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 15, 20

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 20.<sup>1</sup> The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 15) and grants Defendant's motion (ECF No. 20).

<sup>1</sup> Defendant filed a motion for summary judgment. ECF No. 18. Defendant subsequently filed an amended motion for summary judgment. ECF No. 20. Accordingly, this Order addresses the amended motion (ECF No. 20).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an

1 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless  
2 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."  
3 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's  
4 decision generally bears the burden of establishing that it was harmed. *Shineski v.*  
5 *Sanders*, 556 U.S. 396, 409-410 (2009).

### 6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered "disabled" within  
8 the meaning of the Social Security Act. First, the claimant must be "unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be  
13 "of such severity that he is not only unable to do his previous work[, ] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy." 42 U.S.C. §  
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
19 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work  
20 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial

1 gainful activity,” the Commissioner must find that the claimant is not disabled. 20  
2 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activity, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
6 “any impairment or combination of impairments which significantly limits [his or  
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
9 this severity threshold, however, the Commissioner must find that the claimant is  
10 not disabled. 20 C.F.R. § 416.920(c).

11 At step three, the Commissioner compares the claimant’s impairment to  
12 severe impairments recognized by the Commissioner to be so severe as to preclude  
13 a person from engaging in substantial gainful activity. 20 C.F.R. §  
14 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
15 enumerated impairments, the Commissioner must find the claimant disabled and  
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does not meet or exceed the  
18 severity of the enumerated impairments, the Commissioner must pause to assess  
19 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),  
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
2 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
6 capable of performing past relevant work, the Commissioner must find that the  
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing other work in the national economy.  
11 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
12 must also consider vocational factors such as the claimant's age, education and  
13 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of  
14 adjusting to other work, the Commissioner must find that the claimant is not  
15 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to  
16 other work, analysis concludes with a finding that the claimant is disabled and is  
17 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

18 The claimant bears the burden of proof at steps one through four above.  
19 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
20 step five, the burden shifts to the Commissioner to establish that (1) the claimant is

1 capable of performing other work; and (2) such work “exists in significant  
2 numbers in the national economy.” 20 C.F.R. § 416.920(c)(2); *Beltran v. Astrue*,  
3 700 F.3d 386, 389 (9th Cir. 2012).

#### 4 **ALJ’S FINDINGS**

5 Plaintiff applied for supplemental security income benefits on October 20,  
6 2011, alleging an amended onset date of June 1, 2011. Tr. 44-45, 269-274. The  
7 application was denied initially, Tr. 120-123, and upon reconsideration. Tr. 127-  
8 136. Plaintiff appeared for a hearing before an Administrative Law Judge (ALJ)  
9 on May 14, 2013. Tr. 43-97. On July 5, 2013, the ALJ denied Plaintiff’s claim.  
10 Tr. 20-36.

11 At step one, the ALJ found that Plaintiff has not engaged in substantial  
12 gainful activity since October 20, 2011. Tr. 22. At step two, the ALJ found  
13 Plaintiff has the following severe impairments: arthralgias; obesity; diabetes  
14 mellitus; affective disorder; and anxiety disorder. Tr. 22. At step three, the ALJ  
15 found that Plaintiff does not have an impairment or combination of impairments  
16 that that meets or medically equals a listed impairment. Tr. 24. The ALJ then  
17 concluded that Plaintiff has the RFC to perform light work, with the following  
18 additional limitations:

19 Claimant can lift and carry 20 pounds occasionally and ten pounds  
20 frequently. She can stand and walk for a total of two hours in an eight-hour  
workday and sit for a total of six hours in an eight-hour workday. The  
claimant can never climb ladders, ropes, or scaffolds and can frequently

1 balance. She can perform all other postural movements occasionally. The  
2 claimant must avoid concentrated exposure to extreme cold or heat,  
3 vibrations, and pulmonary irritants. She must avoid concentrated exposure  
4 to noise which means that she is capable of a moderate noise intensity level  
5 as that term is defined by the SCO. The claimant can understand, remember,  
6 and carry out simple, repetitive tasks. She can adapt to workplace changes  
as would be required of simple, repetitive task work. The claimant can work  
superficially and occasionally with the general public. She can set goals  
independently for simple, repetitive task work, and with these restrictions,  
she can complete a normal workweek without significant interruptions from  
her mental health symptoms.

7 Tr. 26-27.

8 At step four, the ALJ found that Plaintiff is unable to perform any past  
9 relevant work. Tr. 34. At step five, the ALJ found that, considering Plaintiff's  
10 age, education, work experience, and RFC, there are other jobs in significant  
11 numbers in the national economy that Plaintiff could perform, such as assembler,  
12 escort vehicle driver, and semiconductor bonder. Tr. 35. On that basis, the ALJ  
13 concluded that Plaintiff is not disabled as defined in the Social Security Act. Tr.  
14 36.

15 On March 31, 2015, the Appeals Council denied review, Tr. 1-6, making the  
16 ALJ's decision the Commissioner's final decision for purposes of judicial review.  
17 *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

## ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying her supplemental security income benefits under Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ properly found Plaintiff's psychological impairments did not meet Listing 12.04 or 12.06;
2. Whether the ALJ properly weighed the medical opinion evidence; and
3. Whether the ALJ properly discredited Plaintiff's symptom testimony.

ECF No. 15 at 4-5.

## DISCUSSION

### A. Listings 12.04 and 12.06

Plaintiff faults the ALJ for failing to find at step three that her mental impairments meet Listing 12.04 (affective disorder) and 12.06 (anxiety related disorder). ECF No. 15 at 5-9. With respect to both listings, Plaintiff alleges the ALJ erred by failing to analyze the paragraph A criteria.

The claimant bears the burden of establishing a prima facie case of disability under the listing of impairments. *Tackett*, 180 F.3d at 1098-99. To "meet" a listed impairment, a claimant must establish that her condition satisfies each element of the listed impairment in question. *See Sullivan v. Zebley*, 493 U.S. 521, 530 (1990); *Tackett*, 180 F.3d at 1099. To "equal" a listed impairment, the claimant



1 “must establish symptoms, signs, and laboratory findings” at least equal in severity  
2 and duration to each element of the most similar listed impairment. *Tackett*, 180  
3 F.3d at 1099-1100 (quoting 20 C.F.R. §404.1526).

4 *1. Listings 12.04 and 12.06: Paragraph A Criteria*

5 Plaintiff alleges that the ALJ erred by failing to analyze the A criteria of  
6 both listings. She alleges that she meets the A criteria for a variety of reasons,  
7 including (1) diagnoses of depressive disorder and PTSD, “characterized by  
8 anhedonia, anxiety, suicidality, and anger,” ECF No. 15 at 10 (citing Tr. 414); (2)  
9 an assessed GAF of 50; (3) the two symptoms of anhedonia and suicidality meet  
10 the requirements of the A criteria; and (4) Plaintiff has a long, well-documented  
11 history of appetite disturbances, serious weight problems, and sleep disturbance.  
12 *Id.*<sup>2</sup> Plaintiff misapprehends the paragraph A criteria of the step three analysis.

13  
14  
15 <sup>2</sup> Plaintiff cites multiple record describing appetite and weight problems; *see, e.g.*,  
16 Tr. 99, 108, 286, 364, 436, 538. This is irrelevant because the ALJ implicitly  
17 found that Plaintiff’s conditions met the A criteria by finding medically  
18 determinable impairments at step two. The same is true with respect to Plaintiff’s  
19 extensive record cites describing sleep disturbance, sleep apnea and other sleep  
20 problems. *See, e.g.*, Tr. 63, 102, 127, 286, 301.

1 As noted, in order to qualify as disabled at step three of the evaluation, a  
2 claimant must meet or exceed a listed impairment in Appendix 1 to Part 404 of the  
3 regulations. 20 C.F.R. § 404.1520(d). In order to meet a listing in Appendix 1 for  
4 a mental disorder, a claimant must satisfy criteria in paragraph A of the listings,  
5 which medically substantiates the presence of a mental disorder, and the criteria in  
6 paragraphs B or C, which describe the functional limitations associated with the  
7 mental disorder which are incompatible with the ability to work. 20 C.F.R, Pt.  
8 404, Subpt. P, App. 1, § 1200(A).

9 Any error by the ALJ in failing to specifically address the paragraph A  
10 criteria, however, is harmless because this paragraph merely requires medically  
11 substantiating the presence of a mental disorder. The ALJ did so by finding at step  
12 two that Plaintiff suffers from two severe, medically determinable impairments:  
13 anxiety disorder and affective disorder, Tr. 22. *See, e.g., Holohan v. Massanari*,  
14 246 F.3d 1195, 1203 (9th Cir. 2001) (Plaintiff was diagnosed with major  
15 depression and panic disorder without agoraphobia. “She therefore satisfies the  
16 paragraph A criteria for both affective disorders and anxiety related disorders.”);  
17 *see also Evenhus v. Astrue*, 815 F. Supp. 1154, 1159-60 (D.Or. 2011) (ALJ did not  
18 err in step three analysis by discussing the B criteria of listing 12.06, anxiety  
19 disorders, after finding at step two that anxiety disorder is a severe impairment,  
20 after thoroughly examining and detailing the medical evidence of record).

1 Thus, contrary to Plaintiff's contention, the ALJ was only required to  
2 determine as to each impairment whether either the B or C criteria were present.

3 *2. Listing 12.04 and 12.06: Paragraph B and C Criteria*

4 For both listing 12.04 and 12.06, meeting the B criteria requires at least two  
5 of the following: marked restriction of activities of daily living; marked difficulties  
6 in maintaining social functioning; marked difficulties in maintaining concentration,  
7 persistence, or pace; or repeated episodes of decompensation, each of extended  
8 duration. *See* 20 C.F.R § 416.920a; *see also* 20 C.F.R. Pt. 404, Subpt. P, App. 1,  
9 listings 12.04 and 12.06.

10 The ALJ found that the paragraph B criteria were not met,<sup>3</sup> a finding that is  
11 fully supported by the record. The ALJ then properly considered the alternative  
12 paragraph C criteria. Tr. 26. With respect to Listing 12.04, paragraph C requires  
13 that the mental impairment "cause repeated, extended episodes of decompensation  
14 or limit the claimant in such a way that any increase in mental demands would  
15 cause such an episode of decompensation;" or a current inability to function

16 \_\_\_\_\_  
17 <sup>3</sup>This is because the ALJ found mild restrictions in activities of daily living;  
18 moderate difficulties in social functioning; moderate difficulties in concentration,  
19 persistence or pace; and no episodes of decompensation. Tr. 25-26. Plaintiff fails  
20 to demonstrate that she suffers two marked limitations.

1 outside a highly supportive living arrangement going back at least one year with a  
2 continuing need for such arrangement. Tr. 26. The ALJ points out that Plaintiff  
3 did not allege she met any of the paragraph C conditions, and there is no medical  
4 evidence substantiating this level of severity. Tr. 26. The ALJ is correct. Plaintiff  
5 cites nothing in the record that supports finding she meets the paragraph C criteria  
6 for listing 12.04.

7 The paragraph C criteria of listing 12.06 requires a complete inability to  
8 function outside of one's home. The ALJ correctly noted that Plaintiff did not  
9 allege an impairment reaching this level of severity, nor does any evidence support  
10 it. Tr. 26.

11 The ALJ correctly found that the paragraph B criteria are not met because  
12 the evidence does not show at least two marked restrictions in functioning; nor  
13 does the evidence show an extreme limitation in functioning as described in the  
14 alternative paragraph C criteria. Plaintiff cites numerous records in support of her  
15 step three contention, but these are largely her own reports of functioning or  
16 records that substantiate the undisputed paragraph A criteria. Here, Plaintiff did  
17 not meet her burden of producing medical evidence that establishes all of the  
18 medical findings contained in the Listings at step three. *See Bowen v. Yuckert*, 482  
19 U.S. 137, 146 and n. 5 (1987).

**B. Medical Opinion Evidence**

Plaintiff faults the ALJ for discounting the opinions of treating psychiatrist Moataz El Refaie, M.D.; reviewing psychologist John McRae, Ph.D.; nurse Jody Gray; and examining psychologist Tae-Im Moon, Ph.D. ECF No. 15 at 13-21.

There are three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant’s file (nonexamining or reviewing physicians).” *Holohan*, 246 F.3d at 1201-02 (9th Cir. 2001) (brackets omitted). “Generally, a treating physician’s opinion carries more weight than an examining physician’s, and an examining physician’s opinion carries more weight than a reviewing physician’s.” *Id.* “In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

If a treating or examining physician’s opinion is uncontradicted, an ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported

1 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
2 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or  
3 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
4 may only reject it by providing specific and legitimate reasons that are supported  
5 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81  
6 F.3d 821, 830-31 (9th Cir. 1995).

7 Nurses and social workers are “other sources,” whose opinions must be  
8 considered. 20 C.F.R. §§ 404.151, 416.913. To reject the opinion of such “other  
9 sources,” the ALJ must identify germane reasons. *Molina*, 674 F.3d at 1108.

10 *1. Dr. Refaie*

11 In October 2007, Dr. Refaie completed a psychiatric summary, which listed  
12 Dr. Refaie’s diagnosis, summary of medications, and summary of treatment for  
13 Plaintiff. Tr. 466. The ALJ gave “minimal weight” to the summary. Tr. 33. First,  
14 the ALJ noted that the summary was “prepared in October 2007, nearly four years  
15 prior to her alleged onset date, which gives the statement limited probative value  
16 for this analysis.” Tr. 33 (citing Tr. 466). This was appropriate. “Medical  
17 opinions that predate the alleged onset of disability are of limited relevance.”  
18 *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2010).  
19 Second, the ALJ found that the 2007 psychiatric summary did not contain an  
20 assessment of Plaintiff’s functioning. Tr. 33 (citing Tr. 466). The ALJ did not err

1 in failing to specifically discuss and provide reasons for rejecting Dr. Refaie's  
2 summary in this document because the doctor did not include an assessment of any  
3 functional limitations. *See Turner v. Comm'r of Soc. Sec. Admin.*, 613 F.3d 1217,  
4 1223 (9th Cir. 2010) (where a doctor's report did not assign any specific  
5 limitations or opinions in relation to an ability to work, "the ALJ did not need to  
6 provide 'clear and convincing reason' for rejecting [the] report because the ALJ  
7 did not reject any of [the report's] conclusions"); *see also Kay v. Heckler*, 754 F.2d  
8 1545, 1549 (9th Cir. 1985) (the "mere diagnosis of an impairment . . . is not  
9 sufficient to sustain a finding of disability."). Here, the ALJ did not err in  
10 assessing the summary little weight.

11 With respect to later records, the ALJ gave "some weight" to Dr. Refaie's  
12 opinions. Tr. 32. For example, the ALJ noted that in January 2010, Dr. Refaie  
13 opined that the claimant "would maintain her current level of functioning with  
14 treatment, but withdrawal of treatment could cause her condition to deteriorate."  
15 Tr. 32. The ALJ found that this opinion was based on Dr. Refaie's observations as  
16 her treatment provider and is consistent with reports showing that her symptoms  
17 improved with treatment. Tr. 32.

18 In challenging the weight the ALJ gave Dr. Refaie's opinions, Plaintiff  
19 contends that the ALJ discounted opinions "demonstrating that these are chronic  
20 problems of long duration and are not improving with treatment," and that the

1 problems include “significant difficulty venturing out of the home.” ECF No. 15 at  
2 15. The record does not support Plaintiff’s contention for several reasons.

3 First, Dr. Refaie’s objective assessment of functioning was that Plaintiff did  
4 not have any functionally impairing symptoms. Dr. Refaie’s records consistently  
5 noted under the heading “objective” that there are *no signs* of “ongoing”  
6 functionally impairing anxiety symptoms (“including symptoms of PTSD, panic  
7 and fear of social situations”), and *no* functionally impairing depressive symptoms,  
8 after Plaintiff was seen for three visits. Tr. 29, 336, 345, 351, 354, 360 (emphasis  
9 added).<sup>4</sup> Second, Dr. Refaie repeatedly documented that Plaintiff improved with  
10 medication. *See, e.g.*, Tr. 29, 336 (Plaintiff reports she is able to maintain attention  
11 on tasks with medication, and has no side effects); Tr. 29, 363 (Plaintiff has been  
12 responsive to medication intervention). Third, Dr. Refaie’s mental status

13 \_\_\_\_\_  
14 <sup>4</sup> The ALJ cited to numerous records from Dr. Refaie indicating there were “no  
15 objective findings of functionally impairing anxiety symptoms ongoing.” Tr. 23,  
16 29 (citing Tr. 348-350 (11/18/2010); Tr. 351-352 (2/3/2011); Tr. 354-355  
17 (5/5/2011); Tr. 357-358 (8/8/2011)). Dr. Refaie made this finding again on  
18 October 10, 2011, although it is not noted by the ALJ. Tr. 360. In the same  
19 records cited by the ALJ, Dr. Refaie also noted that there were no functionally  
20 impairing depressive symptoms after three visits.



1 examinations were within normal limits, demonstrating normal functioning. Tr. 29  
2 (citing Tr. 330, 358). Fourth, in contending that the ALJ discounted Plaintiff's  
3 problems, including "significant difficulty venturing out of the home," ECF No. 15  
4 at 15, Plaintiff repeatedly cites to her own subjective reports to Dr. Refaie, not  
5 opinions rendered by Dr. Refaie. For example, in support of her argument,  
6 Plaintiff cites a record indicating she reported to Dr. Refaie that she "has  
7 significant difficulty venturing out of the home." However, that same record  
8 indicated she was a full-time student raising two children.<sup>5</sup> Tr. 336. At the same  
9 appointment, however, Dr. Refaie noted there was no objective evidence that  
10 functionally impairing anxiety symptoms were ongoing, and he observed "[n]o  
11 functionally impairing depressive symptoms after three visits." Tr. 336. As  
12 another example, Plaintiff cites a record in which she reported to Dr. Refaie that  
13 she "has significant difficulty venturing out of the home," but at this appointment  
14 Plaintiff "report[ed] she went camping with her family and had a great time,"  
15 indicating an ability to venture out of the house. ECF No. 15 at 15 (citing Tr.

16 \_\_\_\_\_  
17 <sup>5</sup> Plaintiff testified that she last attended school in 2008, contrary to these records.  
18 Tr. 47. Because the ALJ found Plaintiff less than fully credible, the ALJ was not  
19 required to credit Plaintiff's statement, contrary to her contention at ECF No. 21 at  
20 2-6.

342).<sup>6</sup> The ALJ was not required to credit Dr. Refaie's records of Plaintiff's reported symptoms, because the ALJ found Plaintiff less than fully credible, as discussed *infra*.

Contrary to Plaintiff's claim, the ALJ appropriately weighed Dr. Refaie's opinions.

---

<sup>6</sup> Similarly, Plaintiff cites Tr. 345 (Plaintiff's difficulty leaving home is noted; at the same time, Plaintiff reports she has been feeling "in a good mood" most of the time lately, is looking forward to her kids going back to school, and has been looking for a job); Tr. 351 (same difficulty noted, yet, Plaintiff reports that "she has been enjoying her [new] job."); Tr. 354 (same difficulty noted, however, Plaintiff reports that she is currently looking for a job as an office assistant and might go to school to learn accounting if she does not find a job); Tr. 360 (same difficulty noted, but Plaintiff continues looking for a job as an office assistant); and Tr. 363 (the 2007 summary by Dr. Refaie noting continuous treatment since 10/23/2006 and that Plaintiff "has been responsive to medication intervention."). These records contradict rather than support Plaintiff's allegations of disabling limitations.

1           2. *Dr. McRae*

2           In December 2011, Dr. McRae completed a DSHS determination. Tr. 411-  
3 415. Dr. McRae reviewed the findings of Ms. Gray, Dr. Moon, and Dr. Refaie,  
4 and concluded that Plaintiff's mental health symptoms caused marked or severe  
5 limitations of her ability to work in a public setting, maintain appropriate  
6 workplace behavior, and complete a normal workday or workweek without  
7 interruption from her symptoms. Tr. 411-412. Dr. McRae also opined that  
8 Plaintiff is limited to sedentary work. Tr. 413. Dr. McRae did not provide a  
9 specific assessment of her ability to lift, carry, stand, walk, or sit. Tr. 413.

10           An ALJ may reject the opinion of a non-examining physician by reference to  
11 specific evidence in the medical record. *Sousa v. Callahan*, 143 F.3d 1240, 1244  
12 (9th Cir. 1996); *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

13           First, the ALJ found that Dr. McRae's opinion was based on a limited  
14 review of the records. Tr. 32. It is appropriate for an ALJ to give an opinion  
15 reduced weight because the medical record reviewed lacked certain information.  
16 *See* C.F.R. §§ 404.1527(c)(4), (c)(6), 416.927 (c)(4), (c)(6) (setting forth factors  
17 for the ALJ to consider in assessing the weight of medical opinions). Here, for  
18 example, Dr. McRae did not have Dr. Burdge's examination results to review. Tr.  
19 411.

1 Second, the ALJ found that Dr. McRae's opinion was inconsistent with the  
2 medical evidence as a whole. Tr. 32-33. An ALJ is not required to credit medical  
3 opinions that are unsupported by the record as a whole. *Batson v. Comm'r of Soc.*  
4 *Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Here, for example, the ALJ  
5 noted that Plaintiff's actual functioning on mental status testing was inconsistent  
6 with assessed marked and severe workplace limitations. Tr. 32-33; *see* Tr. 437-  
7 438 (Dr. Moon's assessed MSE results essentially within normal limits).

8 Dr. McRae's opinion was contradicted by other medical evidence. Here, Dr.  
9 McRae opined that Plaintiff is markedly or severely limited in the ability to  
10 maintain behavior in a work setting, and complete a normal workday and  
11 workweek without interruptions from psychologically based symptoms. Tr. 412.  
12 This opinion is contradicted by examining sources, whose opinions are entitled to  
13 greater weight. *See, e.g.*, Tr. 31 (citing Tr. 472) (examining psychologist Dr.  
14 Burdge opined, in part, that Plaintiff had *mild* limitations in the ability to maintain  
15 appropriate behavior in a work setting, and *moderate* limitations in the ability to  
16 complete a normal workday and workweek without interruptions from  
17 psychologically based symptoms). The ALJ appropriately gave greater weight to  
18 the opinion of examining source Dr. Burdge, Tr. 31 (citing Tr. 472), than to Dr.  
19 McRae, a reviewing source. Tr. 32 (citing Tr. 412). The ALJ also properly relied  
20 on other reviewing sources, including the opinion of John Gilbert, Ph.D., and Alex

1 Fischer, Ph.D., that Plaintiff's psychological symptoms are not disabling, as these  
2 sources reviewed more extensive records, including those of Dr. Burdge, than Dr.  
3 McRae. Tr. 32 (citing Tr. 103, 112).

4 Third, the ALJ found that Dr. McRae "did not provide specific evidentiary  
5 support for his cursory, checkbox opinions." Tr. 32. Opinions rendered on check-  
6 box forms that do not contain an explanation of the bases for the conclusion are  
7 entitled to little weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ's  
8 rejection of a check-off report that did not contain an explanation of the bases for  
9 the conclusions was permissible).

10 Moreover, the ALJ was not required to credit Dr. McRae's RFC for  
11 sedentary work since Dr. McRae is not a medical doctor. *See Holohan*, 246 F.3d at  
12 1202 (the regulations give more weight to opinions that are explained to those that  
13 are not, *see* 20 C.F.R. § 404.1527(d)(3), and to the opinions of specialists  
14 concerning matters relating to their specialty over that of nonspecialists, *see id.* §  
15 404.1527(d)(5)). Here, Dr. McRae noted that the medical evidence did not address  
16 any limitation related to physical exertion, but the ALJ assessed sedentary work  
17 limitations. Tr. 413. Even if the ALJ erred in assessing Dr. McRae's opinion,  
18 such error is harmless because the ALJ found Plaintiff can perform three different  
19 jobs that are all sedentary and within Plaintiff's RCF, including assembler, escort  
20 vehicle driver, and semiconductor bonder. Tr. 35. An error is harmless when it

1 does not affect the result. *See Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007),  
2 (citing *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1990) (finding ALJ error  
3 harmless because it did not affect the result)).

4 *3. Ms. Gray*

5 In October 2011, Ms. Gray opined that Plaintiff was capable of  
6 performing light work. Tr. 425-426. The ALJ gave limited weight to the  
7 assessment, because it was in form of a cursory checkbox form with no  
8 explanation for the opinion given. Tr. 32. The ALJ noted that Ms. Gray's opinion  
9 was consistent with the ALJ's RFC. Tr. 32. In November 2011, Ms. Gray  
10 evaluated Plaintiff and determined that she was limited to light activity. Tr. 32.  
11 The ALJ gave this assessment some weight, as it was based on a physical  
12 examination and was consistent with her clinical findings. Tr. 32. Finally, in April  
13 2012, Ms. Gray opined that Plaintiff could sit for most of the day, walking or  
14 standing for brief periods. Tr. 494-495. The ALJ gave it little weight "as it  
15 provided no function-by-function assessment of claimant's abilities and provides  
16 little probative value." Tr. 32.

17 Because Ms. Gray is an "other source," the ALJ was required to identify  
18 germane reasons for discounting her opinions. *Molina*, 674 F.3d at 1108.

19 The ALJ provided germane reasons for giving Ms. Gray's opinions limited  
20 weight. Opinions rendered on check-box forms that do not contain an explanation

1 of the bases for the conclusion are entitled to little weight. *Crane*, 76 F.3d at 253  
2 (ALJ's rejection of a check-off report that did not contain an explanation of the  
3 bases for the conclusions was permissible). Moreover, the ALJ may reject a  
4 medical opinion when the opinion does not include a specific assessment of a  
5 claimant's functional capacity. *See Johnson v. Shalala*, 60 F.3d 1428, 1443 (9th  
6 Cir. 1995).

7 In support of her argument that the ALJ erred in failing to credit Ms. Gray's  
8 opinion, Plaintiff again cites to records documenting her own reports of pain and  
9 symptomology. ECF No. 15 at 17.<sup>7</sup> Because the ALJ found Plaintiff less than  
10 fully credible, as discussed *infra*, she was not required to credit Plaintiff's reports  
11 to Ms. Gray. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (The ALJ  
12 properly disregarded a doctor's opinion which was premised on unreliable  
13 subjective complaints) (citation omitted). Moreover, the records to which Plaintiff  
14 cites are not opinions rendered by Ms. Gray; they are records documenting  
15 Plaintiff's complaints.

16  
17  
18 <sup>7</sup> *E.g.*, Tr. 419 (at Plaintiff's first appointment with Ms. Gray, Plaintiff describes  
19 symptoms); Tr. 522 (Plaintiff describes pain as moderately severe; has had it for  
20 two years).

1 Plaintiff also contends the ALJ should have credited Ms. Gray's notations  
2 that Plaintiff suffered from anxiety and depressive disorder, both chronic. ECF  
3 No. 15 at 17. In so arguing, Plaintiff cites records that include diagnostic history.  
4 *See, e.g.*, Tr. 512 (list of chronic problems includes anxiety and depressive  
5 disorder); Tr. 532 (same). The ALJ found at step two that Plaintiff suffers from  
6 severe mental impairments. Tr. 22-24. While diagnostic history is relevant to the  
7 step two determination, it is not relevant to the ALJ's task of assessing functional  
8 limitations. The ALJ properly relied, in part, on the lack of assessed functional  
9 limitations as a germane reason for giving Ms. Gray's April 2012 assessment little  
10 weight, Tr. 32 (citing Tr. 494-495).<sup>8</sup> *Molina*, 674 F.3d at 1111 (The ALJ may  
11 discount testimony from "other sources" if the ALJ "gives reasons germane to

12 \_\_\_\_\_  
13 <sup>8</sup>Plaintiff alleges that "Ms. Gray's records actually do provide function by function  
14 assessments." ECF No. 15 at 17. Plaintiff does not support this contention by  
15 citing medical records. Ms. Gray's April 2012 opinion cited by the ALJ, Tr. 494-  
16 495, simply states that Plaintiff can sit most of the day, and walk or stand for brief  
17 periods, an opinion that is consistent with the assessed RFC. Plaintiff states that  
18 "none of the records the ALJ relies on provide detailed function by function  
19 assessments," ECF No. 15 at 17, but this is incorrect. *See, e.g.*, Tr. 31-32; Tr. 472  
20 (Dr. Burdge offered a functional assessment).



1 each witness for doing so.” (citation and quotation omitted)). Significantly,  
2 Plaintiff has not identified a functional limitation assessed by Ms. Gray that is not  
3 incorporated into the RFC.

4 Plaintiff faults the ALJ for failing to follow up to find out the basis of Ms.  
5 Gray’s October 2011 opinion, Tr. 425, since the ALJ noted this opinion was in the  
6 form of a check-box form with no explanation for the opinions given. Plaintiff is  
7 mistaken. An ALJ’s duty to conduct an appropriate inquiry to determine the basis  
8 for a doctor’s opinion is not triggered when the opinion is offered, as here, by a  
9 non-acceptable source. Nor is it triggered unless the record is ambiguous or is  
10 inadequate to allow for proper evaluation of the evidence. *Tonapetyan*, 242 F.3d at  
11 1150 (citation and quotation omitted). None apply here.

12 4. *Tae-Im Moon, Ph.D.*

13 In October 2011, Dr. Moon examined Plaintiff and opined that she had  
14 marked limitations in her ability to work in a public setting and maintain  
15 appropriate workplace behavior. Tr. 434-438. The ALJ gave minimal weight to  
16 Dr. Moon’s opinion. Tr. 33. Because Dr. Moon’s opinion was contradicted, the  
17 ALJ was required to provide specific, legitimate reasons for rejecting it. *Bayliss*,  
18 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-831).

19 First, the ALJ rejected Dr. Moon’s opinion because Plaintiff’s presentation  
20 at Dr. Moon’s evaluation was not consistent with the observations of other

1 treatment providers, who noted that Plaintiff was doing well in October 2011. Tr.  
2 33. An ALJ need not accept a treating or examining physician's opinion if it is  
3 inadequately supported by the record as a whole. *See Batson*, 359 F.3d at 1195.  
4 For example, the ALJ noted that Dr. Moon's assessed limitations are inconsistent  
5 with Dr. Refaie's treatment record dated October 10, 2011, which indicated that  
6 Plaintiff's mental status examination was within normal limits. Tr. 33 (citing Tr.  
7 361-362).

8 Second, the ALJ's gave Dr. Moon's opinion less weight because Plaintiff  
9 was not forthcoming about the extent of her alcohol use at this evaluation, which  
10 gave Dr. Moon an incomplete picture of Plaintiff's mental health. Tr. 33. The  
11 record supports the ALJ's finding. *See Coffman v. Astrue*, 469 Fed. App'x 609,  
12 611 (9th Cir. 2012) (affirming ALJ's rejection of examining psychologist's  
13 opinion, in part, due to the fact that "plaintiff periodically concealed" his substance  
14 abuse from providers); *Serpa v. Colvin*, 2013 WL 4480016, \*8 (E.D. Wa., Aug. 19,  
15 2013) (affirming ALJ's rejection of a physician's opinion because it was made  
16 without knowledge of the claimant's substance abuse and narcotic-seeking  
17 behavior). Plaintiff told Dr. Moon that on occasion she consumed one to two cans  
18 of beer, and sometimes one to two servings of hard liquor. Tr. 33, 436, 489.  
19 Plaintiff testified, however, that during this same time frame, from September 2011  
20 through July 2012, she typically consumed a gallon of vodka a week. Tr. 30

1 (citing Tr. 65-66). The Court is not persuaded by Plaintiff's attempts to explain  
2 away these and other inconsistencies.

3 Third, the ALJ rejected Dr. Moon's assessment of Plaintiff's limitations  
4 because it was inconsistent with her mental status examination, which was within  
5 normal limits. Tr. 33 (citing Tr. 437, 490). "When confronted with conflicting  
6 medical opinions, an ALJ need not accept [even] a treating physician's opinion that  
7 is conclusory and brief and unsupported by clinical findings." *Tonapetyan*, 242  
8 F.3d at 1149 (citation omitted). The ALJ provided specific, legitimate reasons for  
9 rejecting Dr. Moon's assessment of limitations.

### 10 **C. Adverse Credibility Finding**

11 Plaintiff faults the ALJ for failing to provide specific findings with clear and  
12 convincing reasons for discrediting her symptom claims. ECF No. 15 at 21-28.

13 An ALJ engages in a two-step analysis to determine whether a claimant's  
14 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must  
15 determine whether there is objective medical evidence of an underlying  
16 impairment which could reasonably be expected to produce the pain or other  
17 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).  
18 "The claimant is not required to show that her impairment could reasonably be  
19 expected to cause the severity of the symptom she has alleged; she need only show

1 that it could reasonably have caused some degree of the symptom.” *Vasquez v.*  
2 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

3 Second, “[i]f the claimant meets the first test and there is no evidence of  
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting  
7 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). “General findings are  
8 insufficient; rather, the ALJ must identify what testimony is not credible and what  
9 evidence undermines the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81  
10 F.3d at 834)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ  
11 must make a credibility determination with findings sufficiently specific to permit  
12 the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
13 testimony.”). “The clear and convincing [evidence] standard is the most  
14 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
15 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
16 924 (9th Cir. 2002)).

17 In making an adverse credibility determination, the ALJ may consider, *inter*  
18 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the  
19 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s  
20 daily living activities; (4) the claimant’s work record; and (5) testimony from

1 physicians or third parties concerning the nature, severity, and effect of the  
2 claimant's condition. *Thomas*, 278 F.3d at 958-59.

3 This Court finds the ALJ provided specific, clear, and convincing reasons  
4 for finding Plaintiff's statements concerning the intensity, persistence, and limiting  
5 effects of her symptoms "are not entirely credible." Tr. 28-30.

6 *1. Lack of Objective Medical Evidence*

7 The ALJ found that Plaintiff's treatment records did not establish disabling  
8 physical or psychiatric symptoms. Tr. 28-29. An ALJ may not discredit a  
9 claimant's pain testimony and deny benefits solely because the degree of pain  
10 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261  
11 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.  
12 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical  
13 evidence is a relevant factor in determining the severity of a claimant's pain and its  
14 disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §416.929(c)(2); *see also*  
15 S.S.R. 96-7p.<sup>9</sup> Minimal objective evidence is a factor which may be relied upon in  
16  
17

18 <sup>9</sup> S.S.R. 96-7p was superseded by S.S.R. 16-3p effective March 16, 2016. The new  
19 ruling also provides that the consistency of a claimant's statements with objective  
20 medical evidence and other evidence is a factor in evaluating a claimant's

1 discrediting a claimant's testimony, although it may not be the only factor. *See*  
2 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

3 With respect to Plaintiff's alleged physical impairment, as the ALJ noted,  
4 the medical records did not show symptoms so severe that they prevent work  
5 activities within the assessed RFC. Tr. 28. For instance, in January 2010, Plaintiff  
6 appeared comfortable and expressed no physical discomfort. Tr. 29 (citing Tr.  
7 331). In April 2011, Plaintiff reports she is "doing fine with her hip pain," and  
8 denied joint and muscle pain and swelling. Tr. 28 (citing Tr. 385). In November  
9 2011, after onset, an examination revealed moderately reduced lumbar range of  
10 motion but was otherwise normal, with full range of motion in all other joints  
11 tested, negative straight leg raising tests, and intact balance and gait. Tr. 28 (citing  
12 Tr. 423). Spinal x-rays and MRI exams have not shown severe changes. Tr. 24,  
13 28 (citing Tr. 396, 400). Complaints of back pain resolved within a month. Tr. 24  
14 (citing Tr. 380-381). And, in April 2012 when Plaintiff was asked what prevented  
15 her from working, she cited COPD symptoms, sleep problems, and anxiety but did  
16 not mention back pain. Tr. 24 (citing Tr. 469). Because an ALJ may discount pain  
17 and symptom testimony based on a lack of medical evidence, as long as it is not

18  
19 symptoms. S.S.R. 16-3p at \*6. Nonetheless, S.S.R. 16-3p was not effective at the  
20 time of the ALJ's decision and therefore does not apply in this case.

1 the sole basis for discounting a claimant's testimony, the ALJ did not err when she  
2 found that Plaintiff's complaints exceeded and were not supported by objective and  
3 physical exam findings.

4 With respect to mental health related impairments, the ALJ found that  
5 mental health evaluations did not show that Plaintiff's psychiatric impairments  
6 prevented her from working. Tr. 29. Multiple examinations show Plaintiff  
7 consistently demonstrated normal functioning; treatment providers have observed  
8 symptoms inconsistent with allegedly disabling limitations; and the record shows  
9 that Plaintiff was aware medication was effective but stopped taking it, despite its  
10 improvement in her symptoms and functioning. Tr. 29-30. For example, the ALJ  
11 noted that in April 2012, Dr. Burdge evaluated Plaintiff. He described Plaintiff as  
12 cooperative, friendly, and humorous. Tr. 29 (citing Tr. 469). Functional  
13 intelligence appeared to be in the average to above-average range, testing revealed  
14 intact memory and concentration, as well as a normal fund of knowledge.  
15 Performance on Trails A and B fell within the normal range. Tr. 29 (citing Tr. 469-  
16 471). Treatment providers in January, March and November 2010 [before onset]  
17 note normal mental status examinations (MSEs), good mood, relaxed, and good  
18 eye contact, Tr. 29 (citing Tr. 330-331); Plaintiff is noted to be happy with  
19 appropriate affect, good insight and good cognition; reports is doing well with  
20 stable moods and no depressive episodes; Tr. 29 (citing Tr. 337-338); and Plaintiff

1 reports is in a good mood with no depressive symptoms, Tr. 29 (citing Tr. 348-  
2 349).

3 After onset, in August 2011, Plaintiff again showed no “no functionally  
4 impairing anxiety symptoms ongoing” and she denied feeling depressed, even  
5 though she was unemployed. The MSE again was normal. Tr. 29 (citing Tr. 357-  
6 358). In October 2011, some difficulties with concentration are noted, but overall  
7 the MSE was within normal limits. Tr. 29 (citing Tr. 437). Similarly, no unusual  
8 anxiety or evidence of depression is noted in either March 2012, Tr. 539, or April  
9 2013. Tr. 29 (citing Tr. 514). The ALJ’s finding that Plaintiff’s allegations of  
10 disabling mental health symptoms are inconsistent with the overall findings of  
11 treating and examining sources is supported by substantial evidence.

12 *2. Lack of Compliance with Medical Treatment*

13 The ALJ found Plaintiff’s treatment efforts for physical complaints have  
14 been inconsistent, and Plaintiff has not followed the recommendations of treatment  
15 providers, indicating that her “symptoms are not as limiting as she alleges.” Tr.  
16 28. Failing to follow a prescribed course of medical treatment is a permissible  
17 reason for discounting Plaintiff’s credibility. *Smolen v. Chater*, 80 F.3d 1273,  
18 1284 (9th Cir. 1996) (An ALJ may consider a claimant’s unexplained or  
19 inadequately explained failure to follow a prescribed course of treatment when  
20 assessing a claimant’s credibility). The ALJ identified several instances of lack of



1 compliance with recommended medical treatment. Tr. 28. First, the ALJ noted  
2 that Plaintiff failed to follow through with a gastric bypass procedure after it was  
3 approved, despite morbid obesity. Tr. 28 (citing Tr. 358). Second, Plaintiff  
4 stopped using an inhaler for COPD because she forgot to use it. Tr. 28 (citing Tr.  
5 385). She was not on medications for diabetes, indicating the condition was not  
6 severely limiting as alleged. Tr. 28. Finally, Plaintiff was inconsistent in her use  
7 of her sleep apnea machine. Tr. 28.<sup>10</sup> The ALJ noted that Plaintiff's "treatment  
8 efforts are not what one would reasonably expect for a person with disabling  
9 physical problems." Tr. 28. The ALJ properly considered Plaintiff's failure to  
10 comply with medical treatment, since one with severe impairments would  
11 presumably follow prescribed treatment to obtain relief. *Smolen*, 80 F.3d at 1284.

---

13 <sup>10</sup> Plaintiff contends that the ALJ erred in relying on her inconsistent use of the  
14 sleep apnea machine. ECF No. 15 at 24. The medical record states that Plaintiff  
15 did not use her sleep apnea machine when she was homeless and unable to plug in  
16 the machine. Tr. 431. The ALJ failed to consider and address this explanation.  
17 Defendant concedes this was error. ECF No. 20 at 23. The Court agrees that  
18 reliance on this fact was error, but finds it is harmless in light of the ALJ's other  
19 cited examples of non-compliance and other properly supported reasons. *See*  
20 *Carmickle*, 533 F.3d at 1162-63.

1        *3. Improvement with Treatment and Lack of Compliance with Mental*  
2        *Health Treatment*

3        The ALJ found that Plaintiff's condition was well controlled with  
4 medication. *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir.  
5 2006) (Impairments that can be controlled effectively with medication are not  
6 disabling for the purpose of determining eligibility for benefits.). Plaintiff reported  
7 psychotropic medication significantly improved her symptoms. Tr. 29-30 (citing  
8 Tr. 330). Plaintiff also reported symptoms increased when she ran out of  
9 medication for four days, Tr. 30 (citing Tr. 333), indicating that she was aware of  
10 the effectiveness of the medication.

11        The ALJ noted that despite this knowledge, Plaintiff testified that she  
12 stopped taking psychotropic medication in December 2011. Tr. 30 (citing Tr. 50).  
13 The ALJ noted Plaintiff testified she stopped taking medication because she did  
14 not believe it was working and it caused intolerable side effects. However, when  
15 questioned, Plaintiff admitted that she did not report side effects to providers to  
16 attempt to resolve the issue. Tr. 30 (citing Tr. 50-51). The ALJ observed that  
17 Plaintiff's indifferent compliance with medication despite its efficacy suggested  
18 that Plaintiff's symptoms are not as severe as she alleges. Tr. 30.

19        Accordingly, the ALJ found Plaintiff's credibility was undermined by her  
20 "indifferent compliance with her mental health medication regimen." Tr. 30.

Significantly, the ALJ noted that Plaintiff did not seek mental health treatment for  
ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 34

1 more than a year, from February 2012-2013. Tr. 30 (citing Tr. 441). Unexplained  
2 failure to seek treatment provided a permissible reason for discounting Plaintiff's  
3 credibility. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)  
4 (unexplained or inadequately explained failure to seek treatment or to follow a  
5 prescribed course of treatment is properly considered) (citation and quotation  
6 omitted). When Plaintiff went to Central Washington Comprehensive Mental  
7 Health (CWCMMH) on February 21, 2013, she did so because it was required by  
8 DSHS. Plaintiff reported that she had been out of treatment for over a year. Tr.  
9 30, citing Tr. 441. This was a permissible reason for rejecting Plaintiff's  
10 testimony.

#### 11 4. *Inconsistent Statements*

12 The ALJ found that Plaintiff's credibility was undermined by her  
13 misrepresentations and inconsistent statements regarding her homelessness and  
14 substance abuse. Tr. 30-31.

15 An ALJ may support an adverse credibility finding by citing to  
16 inconsistencies in the claimant's testimony, prior inconsistent statements and  
17 general inconsistencies in the record. *Thomas*, 278 F.3d at 958-59 (inconsistencies  
18 in the claimant's testimony is properly considered); *Tommasetti*, 533 F.3d at 1039  
19 (prior inconsistent statements may be considered); *Molina*, 674 F.3d at 1112 (an  
20

1 ALJ may support an adverse credibility finding by citing to general inconsistencies  
2 in the record).

3 Here, the ALJ identified inconsistent statements Plaintiff has reported  
4 regarding her homelessness: (1) It appears that Plaintiff spends four to five days a  
5 week at her mother's home caring for her (Plaintiff's) children, although she has  
6 repeatedly asserted that she is homeless. Tr. 30-31 (citing Tr. 55) (Plaintiff  
7 testified that she is homeless. She stays "off and on" between her mother's house,  
8 her boyfriend's stepdaughter's house; and the houses of friends, her sponsor and  
9 people she knows in recovery); (2) Plaintiff testified that her two children are with  
10 her mother because she "ended up homeless and didn't want [her] children on the  
11 street." Tr. 31 (citing Tr. 72); (3) Plaintiff testified that she makes meals for her  
12 children at her mother's house about four nights a week, makes sure that they are  
13 doing their homework and chores, and watches movies with them. Tr. 31 (citing  
14 Tr. 73-75); (4) In October 2011, four months after onset, Plaintiff reported that she  
15 is separated from her partner of six years. Tr. 30 (citing Tr. 360); and (5) Plaintiff  
16 told Dr. Burdge in April 2012 that she receives housing assistance, indicating  
17 Plaintiff had funding for a residence. Tr. 30 (citing Tr. 469).<sup>11</sup> Not noted by the  
18 ALJ, but further supporting her credibility determination, is a record three months  
19

---

20 <sup>11</sup> The ALJ's citation is incorrect. Plaintiff's statement to Dr. Burdge is at Tr. 468.

1 after onset by treating doctor Puneet Kakkar, M.D., which lists Plaintiff's  
2 occupation as "Stay at Home Mom." Tr. 367.

3 With respect to substance abuse, the ALJ noted that Plaintiff testified that  
4 she drank alcohol daily from September 2011 through July 2012, last used  
5 controlled substances on July 2, 2012, and has been clean since. Tr. 30 (referring  
6 to Tr. 65-67). Yet, Plaintiff reported far less alcohol consumption to Dr. Moon.  
7 Tr. 436, 489. An ALJ may properly rely on a lack of candor with respect to  
8 substance use when assessing credibility. *Thomas*, 278 F.3d at 959 (finding that  
9 lack of candor regarding substance abuse supported the ALJ's negative  
10 conclusions about the claimant's physical description of her pain).

11 Plaintiff offers a different interpretation of the evidence in support of her  
12 contention that the ALJ misconstrued Plaintiff's statements of past  
13 methamphetamine and marijuana use. ECF No. 21 at 6-8. However, the  
14 discrepancies between Plaintiff's testimony about alcohol use and her report to Dr.  
15 Moon establish that Plaintiff was less than fully candid when reporting alcohol use,  
16 a finding that Plaintiff does not directly challenge. This was a clear and  
17 convincing reason to discredit Plaintiff's testimony.

#### 18 5. *Daily Activities*

19 The ALJ found that Plaintiff's daily activities were inconsistent with  
20 allegedly disabling anxiety and severe physical limitations. Tr. 31.

1 A claimant's reported daily activities can form the basis for an adverse  
2 credibility determination if they consist of activities that contradict the claimant's  
3 "other testimony" or if those activities are transferable to a work setting. *Orn*, 495  
4 F.3d 625, 639 (9th Cir. 2007); *see also Fair*, 885 F.2d at 603 (daily activities may  
5 be grounds for an adverse credibility finding "if a claimant is able to spend a  
6 substantial part of his day engaged in pursuits involving the performance of  
7 physical functions that are transferable to a work setting."). "While a claimant  
8 need not vegetate in a dark room in order to be eligible for benefits, the ALJ may  
9 discredit a claimant's testimony when the claimant reports participation in  
10 everyday activities indicating capacities that are transferable to a work setting" or  
11 when activities "contradict claims of a totally debilitating impairment." *Molina*,  
12 674 F.3d at 1112-13 (internal quotation marks and citations omitted).

13 Plaintiff testified that she takes the bus once or twice a week, can read a bus  
14 schedule, and plan trips, Tr. 28 (citing Tr. 58), which is inconsistent with disabling  
15 social anxiety. In October 2011, about four months after the alleged onset date,  
16 Plaintiff stated that she helped her friend's children get ready for school in the  
17 morning, saw them off, and helped them with their homework. Tr. 436. She  
18 enjoys cooking Mexican food. Tr. 31 (citing Tr. 436-37). In April 2012, Plaintiff  
19 reported no difficulty tending to her personal needs, including hygiene, feeding  
20 herself, managing money, shopping and household chores. Tr. 25, 31 (citing Tr.

1 470). Plaintiff has reported that she is able to chair her home group 12-step  
2 meetings. Tr. 31 (citing Tr. 450-51, 454 (“I chair the meeting on Tuesdays”)).  
3 Plaintiff testified that she watches movies and is able to follow and understand the  
4 plot, indicating the ability to concentrate. Tr. 31 (citing Tr. 74-75). The evidence  
5 of Plaintiff’s daily activities in this case may be interpreted more favorably to the  
6 Plaintiff, however, such evidence is susceptible to more than one rational  
7 interpretation, and therefore the ALJ’s conclusion must be upheld. *See Burch*, 400  
8 F.3d at 679. Here, Plaintiff’s daily activities were reasonably considered by the  
9 ALJ to be inconsistent with the Plaintiff’s allegations of disabling functional  
10 limitations. Even assuming that the ALJ erred in relying on Plaintiff’s daily  
11 activities, any error is harmless because, as discussed in detail in this section, the  
12 ALJ offered additional reasons, supported by substantial evidence, for the ultimate  
13 adverse credibility finding. *See Carmickle*, 533 F.3d at 1162-63.

#### 14 *6. Reason for Stopping Work*

15 The ALJ found that Plaintiff stopped working for reasons unrelated to her  
16 disability. Tr. 31. When considering a claimant’s contention that she cannot work  
17 because of her impairments, it is appropriate to consider whether the claimant has  
18 not worked for reasons unrelated to her alleged disability. *See Bruton v.*  
19 *Massanari*, 268 F.3d 824, 828 (9th Cir. 2001) (the fact that the claimant left his job  
20 because he was laid off, rather than because he was injured, was a clear and

1 convincing reason to find him not credible); *Tommasetti*, 533 F.3d at 1040 (the  
2 ALJ properly discounted claimant's credibility based, in part, on the fact that the  
3 claimant's reason for stopping work was not his disability).

4 Here, the ALJ relied on the fact that in May 2011, Plaintiff stated that she  
5 was going to be laid off soon "because they have no funding available." Tr. 31  
6 (citing Tr. 354); *see also* Tr. 70 (Plaintiff testified her job ended in June 2011  
7 because the office "had to close"). Moreover, the ALJ noted Plaintiff's continued  
8 pursuit of employment after her alleged onset date "suggests that her symptoms  
9 were not as limiting as she currently alleges." Tr. 31.

10 In sum, despite Plaintiff's arguments to the contrary, the ALJ provided  
11 several specific, clear, and convincing reasons for rejecting Plaintiff's testimony.  
12 *See Ghanim*, 763 F.3d at 1163.

### 13 CONCLUSION

14 After review the Court finds the ALJ's decision is supported by substantial  
15 evidence and free of harmful legal error.

#### 16 IT IS ORDERED:

- 17 1. Plaintiff's motion for summary judgment, ECF No. 15, is DENIED.
- 18 2. Defendant's amended motion for summary judgment, ECF No. 20, is  
19 GRANTED.



1 3. Defendant's motion for summary judgment, ECF No. 18, is DENIED as  
2 moot.

3 The District Court Executive is directed to file this Order, provide copies to  
4 counsel, enter judgment in favor of defendant and **CLOSE** the file.

5 DATED this 13th day of September, 2016.

6 S/ Mary K. Dimke

7 MARY K. DIMKE  
8 UNITED STATES MAGISTRATE JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20